Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

To: The Commission

COMMENTS OF NEXSTAR BROADCASTING, INC.

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SUMMARY

Nexstar Broadcasting, Inc. ("Nexstar") respectfully submits these comments in response to the Commission's *Notice of Inquiry* initiated as one part of the Commission's quadrennial review of its ownership rules.

The media marketplace has undergone vast and dramatic changes and, today, provides consumers with a plethora of media choices available from a abundance of providers in every format imaginable. In this media environment, television-only broadcasters are no longer competing only with other in market television stations and media providers such as radio stations and newspapers. Rather, they are competing against those same entities as well as programming provided via multichannel video programming distributors ("MVPDs") and the Internet.

Television-only broadcasters also are facing ever escalating programming costs, not only from the increasing costs associated with producing local programming, but also from the growing payments due to their networks and rising syndicated programming fees. Yet, with the increased competition from MVPD and the Internet, television broadcasters are facing declining revenues. In addition, television stations continue to face expenses associated with converting their operations from analog to digital as they bring their studios into the digital era.

It is within this radically changed environment that the Commission must consider the goals of competition, diversity and localism underpinning its media ownership rules. Nexstar suggests that it is time for the Commission to set aside its focus on the minutia of these goals and consider them within the broader context of today's diverse and ever expanding media marketplace as a whole. Nexstar, urges the Commission to acknowledge, as its predecessors did, that the Local TV Ownership Rule is no longer necessary to foster its goals of diversity and

localism. In addition, Nexstar urges the Commission to concede that today's media marketplace is hypercompetitive and the only "competition" measure that is necessary for the Commission to utilize is one similar to the antitrust merger guidelines used by the Department of Justice and Federal Trade Commission, which focuses on all of the relevant evidence rather than a single arbitrary statistic.

Further, in an age when consumers treat their media choices as fungible, it makes no sense for the Commission to maintain a regulatory rule with roots in a limited-choice media age. The Local TV Ownership Rule establishes bright-line guidelines that are applicable to all media owners and all stations equally notwithstanding that all media owners and all stations are not equal. The current rule ignores that ratings and rankings are a function of how well a station's network-affiliated and syndicated programming perform, fails to account for programming delivered via MVPDs, and disregards market anomalies.

Television broadcasters continue to play a vital role in their communities, providing emergency information, including weather and AMBER alerts, as well as local news and appealing entertainment programming. In order for consumers to continue to have this media choice available, it is imperative that the Commission acknowledge how the drastic changes in the media marketplace have affected television-only broadcasters and bring its Local TV Ownership Rule into the 21st Century. The Commission must modify the rule to permit common ownership of two TV stations in all markets, including medium and small markets, regardless of voices and rankings, subject only to antitrust concerns. Otherwise, consumers may lose access to this media choice.

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To: The Commission

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. ("Nexstar") respectfully submits these comments in response to the Commission's *Notice of Inquiry* (the "NOI") (FCC 10-92, released May 25, 2010) in the above-captioned proceeding. The NOI is one part of the Commission's current review of its media ownership rules and is intended to assist the Commission in establishing a framework within which to analyze whether its media ownership rules remain "necessary in the public interest as a result of competition," due to the dramatic changes occurring in the media marketplace.[1]

Nexstar owns and operates 33 full-power television stations serving medium and small markets in 11 states.[2] Nexstar is a pure television broadcast company – it does not own radio stations or cable or other multichannel video programming distributors ("MVPDs"); it does not publish newspapers, magazines or books; it does not have ownership interests in programming

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1 *NOI* at p. 2.

2 Nexstar also provides services to 21 other full-power television stations through shared services agreements, outsourcing agreements, management services agreements and grandfathered time brokerage agreements with the owners of those stations.

(other than with respect to its own locally-produced news and other public interest programming) or MVPD programming channels; it does not produce movies; it does not own advertising representation firms or outdoor billboard spaces; and it does not engage in non-media businesses such as theme parks or financial services. Accordingly, Nexstar is in a unique position to provide insight into the current media landscape and its effect on those television broadcasters that do not derive revenues from sources unrelated to their core business. Therefore, although the Commission is seeking input with respect to all of its media ownership rules, Nexstar's comments herein relate to the media marketplace in general, its effect on television-only broadcasters and the Commission's local television ownership rule, Section 73.3555(b) of the Commission's rules (the "Local TV Ownership Rule").

The current Local TV Ownership Rule goes back to an era when there were three local network affiliates, one or maybe two local newspapers, and a handful of radio stations in all markets except the very largest. Today, consumers in virtually all parts of the country have a vast number of media choices available to them on multiple platforms, which provide many options for obtaining local, regional, national and world news and information (with all of these sources available both at home and on-the-go through mobile media). While the 1970's-era regulations may have made sense in the past, in today's ever-expanding media marketplace such regulations severely limit the ability of medium and small market television stations to compete effectively with the plethora of other media choices available in today's media marketplace. It is time for the Commission to bring its media ownership rules into the 21st Century and permit duopoly ownership in all television markets for television-only broadcasters such as Nexstar.

I. COMPETITION, DIVERSITY AND LOCALISM IN TODAY'S MEDIA MARKETPLACE.

The policy underpinning the Commission's media ownership rules is its goal of promoting competition, diversity and localism in the media marketplace to ensure that media consumers are well-served with media choice. Section III of the NOI asks for comment on how to define and promote these goals in today's media marketplace. The Commission asks how it should measure these goals, what surveys or research it should conduct, what groups it should consider and a number of other questions to determine whether its rules actually promote its stated goals.[3] However, Nexstar believes the Commission would be equally well-served by setting aside its focus on the minutia of defining and measuring these goals and shifting its focus to a more holistic view of today's diverse and ever-expanding media marketplace. Only by doing so will the Commission be able to adopt ownership rules that ensure that free, over-the-air broadcasting remains a vital and effective part of that marketplace.

A. Today's Media Marketplace.

Today's consumers are living in an information explosion era where they can find news and information from numerous sources (e.g., radio, television, MVPD channels, the Internet and newspapers) in a variety of formats (audio, video, RSS, SMS, MMS, mobile, etc.) at virtually any time. Consumers have convenience and choice as to how they obtain their news and information, with technology giving consumers more ways to find information on specific topics and access to more targeted programming. Further, consumers are hunting news by topic and event and are shifting away from interest in local news toward more national and international

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3 *NOI* at pp. 12-25.

topics.[4] This has led to substantial fragmentation in the media market as people gravitate toward those niches that fit their particular interests.

Along with this fragmentation in viewership, television broadcasters are competing for revenues not only against other in-market television broadcasters, but also with a plethora of non-broadcast TV programming networks. Collectively, advertising-supported, MVPD-delivered programming averaged a 48.8 prime time share among 18-49 year olds for the period September 2009 through May 2010.[5] In addition, television broadcasters are competing for advertising dollars against local cable providers who sell commercial advertising time in cable programming through interconnects.[6]

Television broadcasters also compete with local and national newspapers and the Internet. For example, approximately 41 percent of Americans state they obtain most of their local news from newspapers, while another 17 percent obtain most of their local news from the Internet.[7] And, as the Commission has acknowledged, the media industry is experiencing declining advertising revenues as a result of the downturn in the national economy, with advertising revenue for television broadcast television stations declining by more than 13 percent

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4 *State of the News Media: An Annual Report on American Journalism* (2010), Pew Project For Excellence in Journalism, http://www.stateofthemedia.org/2010/overview_major_trends.php (last visited July 7, 2010) (hereinafter the "State of the News Media").

5 Cable Advertising Bureau, *Cable's Target Ability 09/10 Official Season Review*, available at http://www.thecab.tv/main/bm~doc/cables-target-ability.pdf (last visited July 6, 2010).

6 Cable interconnects sell the local advertising for national cable programming channels such as ESPN, TNT, Lifetime, USA Networks and many others, and are generally under common ownership with the dominant local cable provider in a market. Local television broadcasters also are competing against these same cable interconnects for the employment services of talented sales, news and production personnel.

7 *Public Evaluations of the News Media 1985-2009, Press Accuracy Rating Hits Two Decade Low*, the Pew Research Center for the People & the Press, (rel. Sept. 12, 2009), p. 13 (last visited July 7, 2010) (hereinafter the "Public Evaluations of the News Media").

between 2006 and 2008.[8] It is within this background that the Commission must analyze its goals of competition, localism and diversity.

B. Competition.

The NOI asks many questions with respect to how the Commission should measure the current level of competition in the media marketplace.[9] Historically, the Commission has considered four different groups to be protected through broadcaster competition – viewers, advertisers, content creators and distributors. However, in today's media marketplace, advertisers, content creators and distributors (each multi-billion dollar industries in their own right) all have a vast array of choice in how to best reach viewers/consumers. Therefore, Nexstar contends that it is time for the Commission to stop focusing on any group other than viewers/consumers and stop using these other groups and their welfare as proxies for determining whether consumers are well-served with media choices.

Today's media marketplace is highly competitive, with many television and radio broadcast stations in each market, multiple MVPD providers in the majority of markets providing hundreds of program channels; Sirius/XM available nationally; generally at least one local newspaper in a market; nationally, regionally and locally focused Internet websites providing news information; and entertainment programming available on demand through MVPDs and the Internet. To consumers, all of these media opportunities are fungible. Therefore, it is time for the Commission to let go of the fallacy that it is necessary for the Commission to regulate competition among broadcasters as necessary to preserve consumer choice in programming or quality of programming. Indeed, with such an abundance in consumer

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8 *NOI* at p. 4.

9 *Id*. at pp. 13-18.

choice, television stations have no option but to seek the highest quality programming that appeals to their viewers. Otherwise they will lose their appeal and, consequently, their revenues.

Nexstar is encouraged that the NOI questions whether promoting competition in the advertising market should continue to be one of the Commission's competition ownership goals.[10] Nexstar contends there is no correlation between competition in the advertising market and consumer media welfare.[11] This is merely an artificial construct left over from a time of media shortage that is not relevant in this age of media abundance. With the number of platforms available in today's media marketplace, advertisers (and content creators, for that matter) have extensive choice in where to place their content. Indeed, broadcast content is available at no charge on Internet websites such as Hulu.com, fancast.com, the various networks' websites, and aggregator websites such as tvchannelsfree.com and spreety.com. Or consumers can pay a minimal fee and obtain broadcast content through Internet websites such as Netflix or i-Tunes. Therefore, even if that competition in the advertising marketplace as a result of competition in the broadcast marketplace was once a valid Commission concern, today competition in the advertising market has no connection to whether broadcasters are adequately providing consumers with programming choice.

It is also time for the Commission to reject the unsupported and speculative allegations of those who fear that without ownership competition the public will lose access to local programming because broadcasters will reduce costs by repurposing local news on both stations. These allegations are simply contrary to reality. There is no incentive for a single television station owner to broadcast duplicative programming (of any type) on two stations, because

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10 *Id*. at p. 14.

11 Nexstar believes it is speculative at best for the Commission to assume advertisers charge their customers less because they are able to spend less in advertising costs on local television stations.

ultimately the owner wants to attract diverse viewership to each program or newscast to provide the most opportunity to maximize its advertising revenues.[12] For example, in those markets where Nexstar produces news for a second station (either its own or under a shared services arrangement), Nexstar diligently works to create separate and distinct newscasts for each station in order to maximize the total audience. Although some content may be shared, each newscast contains content that is unique to that station; and the shared content frequently is presented differently on the two stations. Further, in most of Nexstar's markets the anchors and the look and presentation of the two stations' newscasts frequently are very different. Nexstar makes these efforts to ensure that its programming is reaching the widest possible audience in order to enhance its market-share and revenues.

Thus, it is time for the Commission to stop using artificial competition analysis constructs to determine if a media market is competitive and acknowledge that, with such an abundance of choice, every facet of the media marketplace is extremely competitive. Accordingly, if the Commission believes any type of competition analysis remains necessary, it should focus on a competition analysis similar to that used in a DOJ/FTC review pursuant to the 1992 Horizontal Merger Guidelines.[13] This type of analysis defines competition in practical terms and mandates a look at all of the relevant evidence instead of focusing on a single arbitrary statistic such as how many station owners will remain in the market after a merger. Using these types of

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12 Broadcasters seek different network affiliations and syndicated programming for their stations in order to maximize the audience and revenue potential across their stations.

13 U.S. Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines (1992) (with April 8, 1997 revisions to Section 4 on efficiencies), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1997). Under the Merger Guidelines the government is first required to determine the relevant geographic and product markets and then determine whether the elimination of a competitor will give the merged entity market power. This analysis also looks at the efficiencies a merger will generate and accounts for them in determining whether any merger is pro-competitive.

guidelines would place the Commission in the best position to determine whether elimination of a single competitor in the market will have adverse consequences on the local market.

C. Localism.

The Commission defines localism as the provision of programming responsive to the needs and interests of the audience within a station's service area. Historically, the Commission has relied on two measures to determine whether licensees are meeting their local programming requirements: (1) the selection of programming responsive to local needs and interests of broadcasters' communities of license, and (2) local news quantity and responsiveness.[14] The NOI asks if the Commission should revise its definition of localism in light of today's media marketplace. Nexstar believes there is no need to change the definition; however, the "measure of localism" should simply be a broadcaster's selection of programming responsive to local needs and interests of its community of license.

As with its competition goal, the Commission asks a number of questions on how to measure whether its localism goal is being achieved in today's media marketplace. For example, the Commission questions whether it should seek a quantitative analysis (i.e., number of hours); a qualitative analysis (i.e., whether consumers are satisfied); or an inputs model (i.e., by examining number of journalists or percentage of station expenditures on local programming). However, these questions have no bearing on whether a television broadcaster should be permitted to own more than one station in a market. Rather, they relate to how well broadcasters serve their communities, which is an entirely separate question.

Nexstar believes that using the Commission's ownership rules to artificially foster localism is not a viable way to ensure that all stations are engaged in meeting the local

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14 *NOI* at p. 18.

programming needs of their local communities. Indeed, even if the Commission were to mandate that every station in a market be separately owned, such a rule would not guarantee that each and every owner will meet its local community's needs and interests. Accordingly, it is time for the Commission to affirm that its ownership rules do not foster localism and, as the Commission previously has acknowledged, that the Local TV Ownership Rule actually hinders localism.[15]

Producing local news and other local programming is expensive, with only about half of all stations doing so profitably.[16] For example, Nexstar's news expenses, excluding production expenses, range from approximately $350,000 in the smallest of Nexstar's markets to more than $2 million in its larger markets. However, as many (including Nexstar) have commented and the Commission has recognized "modifying the local TV rule is likely to yield efficiencies that will allow broadcasters to invest in new local news and public affairs programming, or at least maintain existing local programming."[17]

Nexstar believes that if the Commission modifies the Local TV Multiple Ownership Rule to permit television-only broadcasters to own two stations in a market, news and public affairs programming will remain readily available and may even increase on television stations because this is the type of programming that attracts viewers. Indeed, with the current economics of syndicated programming, Nexstar has determined that in many instances its stations are better served by replacing third-party syndicated programming with its own local news and

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15 *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13678-83 (2003) ("*2002 Biennial Review Order*"), *aff'd in part and remanded in part*, *Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (2004) ("*Prometheus*"), *cert. denied,* 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).

16 *State of the News Media*, http://www.stateofthemedia.org/2010/local_tv_economics.php.

17 *2002 Biennial Review Order*, 18 FCC Rcd at 13685.

entertainment programming. Further, both the Commission and the courts have acknowledged that commonly-owned stations are more likely to carry local news and that consolidation generally improves audience ratings and benefits localism.[18] Accordingly, it is time for the Commission to permanently reject the fallacy that its Local TV Ownership Rule is necessary to preserve localism.

D. Diversity.

The Commission also asks for comment on how to define diversity, again asking a number of questions on how to analyze whether its rules promote diversity.[19] The Commission historically has determined that competition among a number of media outlets is necessary to preserve program diversity, viewpoint diversity, source diversity, outlet diversity and ownership diversity. Program diversity refers to the available variety of programming and formats, with viewpoint diversity reflecting a variety of perspectives and source diversity meaning content available from a number of sources. Outlet diversity is considered to be the number of independently owned media outlets in the market, with ownership diversity defined as the category of such owners (i.e., minorities, women and small businesses). Nexstar believes all five types of diversity are duplicative ways for the Commission to ensure that consumers have many viewpoints available through a variety of programming.

As this Commission has acknowledged, in today's media marketplace there are numerous sources for consumers to obtain programming and for content creators to "broadcast" programming, including broadcast stations, MVPDs, the Internet, and newspapers. And, as the Commission previously has concluded, "the local television ownership rule is no longer

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18 *Prometheus*, 373 F.3d at 415.

19 *NOI* at pp. 21-24.

necessary to foster diversity because there are other outlets for diversity of viewpoint in local markets, and a single-service ownership restriction is not necessary to foster diversity."[20] This is even more true today where the vast abundance of available media sources ensures that viewers are exposed to a wide variety of viewpoints. Further, modifying the Local TV Ownership Rule to permit a television station owner to own two stations in a market will not affect diversity because a single owner will continue to seek the widest possible audience for its stations by providing diverse programs with diverse viewpoints from a variety of sources.

Based on the foregoing, the Local TV Ownership Rule no longer supports or protects the Commission's goals of competition, localism and diversity in today's media marketplace. Based on the Commission's previous determination that its Local TV Ownership Rule is not necessary to foster the Commission's policy goals of localism and diversity, the Commission should consider only how the rule affects the ability of local television stations to compete in today's media marketplace. The Commission must recognize that the Local TV Ownership Rule is hindering local TV broadcasters such as Nexstar from competing effectively in today's media marketplace where stations must operate as efficiently as possible in response to declining advertising revenues. It is Nexstar's belief that the Commission's adoption of a local TV ownership rule that permits pure television broadcasters to own two television stations in a market regardless of the stations' rankings, subject only to appropriate antitrust concerns evaluated through the media marketplace as a whole, is necessary to preserve viewers/consumers access to locally produced news and programming, which is the "true goal" of the Commission's competition, localism and diversity policies.

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[20] *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Report and Order, 23 FCC Rcd 2010, 2065 (2008 the "*2006 Quadrennial Review Order*").

II. THE LOCAL TV OWNERSHIP RULE MUST BE MODIFIED.

As the Commission moves forward in this ownership review, it must consider the media marketplace as a whole, rather than by each segment, because television broadcasters do not compete only with other television broadcasters, nor do radio broadcasters compete only with other radio broadcasters, etc. In today's media marketplace, participants in every segment are in competition not only with other members of their own segment, but also with every other media segment.

Consumers will benefit from a modification of the Local TV Ownership Rule that permits a pure television broadcaster to own two stations in a market. The significant efficiencies inherent in joint ownership and operation of two television stations in the same market include cost-savings related to the co-location and sharing of studio and office facilities, the sharing of administrative and technical staff, and synergies in advertising, sales and newsgathering. These efficiencies are more and more necessary for television broadcasters to continue to provide quality entertainment and news programming for consumers in today's media marketplace.

A. Local TV Broadcasters Provide Invaluable Service To Their Communities.

Local television broadcasters are dedicated to serving their local communities. They have a long history of serving the public interest by providing news and other information responsive to community needs, and it is this commitment to their communities that distinguishes broadcasters from other participants in the media marketplace. Local television provides current and up-to-date information with respect to general news in the local community as well as severe weather alerts, school closing notices and AMBER alerts. Local television stations also actively engage in local community activities. For example, Nexstar's station

KFDX-TV, which serves the Wichita Falls, Texas-Lawton, Oklahoma Designated Market Area (DMA #149), broadcasts more than 25 hours per week of local news programming, with news from 5:30-7:00 AM, 12:00-12:30 PM, 5:00-5:30 PM, 6:00-6:30 PM and 10:00-10:35 PM (which repeats in the overnight hours), Monday through Friday. KFDX-TV also broadcasts local news at 6:00 PM and 10:00 PM on Saturdays and 5:00 PM and 10:00 PM on Sundays.

KFDX-TV broadcasts a news and information program called RFD-3 with Joe Brown (a local farm and ranch report) at 5:00 AM Monday through Friday and a half-hour Sunday sports program at 10:30 PM. KFDX-TV's Sunday sports program and local newscasts include stories dedicated to local high school sports, previewing local games of importance, covering a *Team of the Week*, and describing local athletes' aspirations beyond high school, among other topics. KFDX-TV also produces a half-hour Friday night program dedicated to high school football from September through November. Finally, due to its location in the heart of Texas's tornado alley, KFDX-TV also routinely provides emergency weather information to its viewers.

KFDX-TV personnel are active in the local community. The station frequently provides tours of the station to interested groups and sponsors numerous community events, including:

- the Bridal Market
- Women's Expo
- Kid'sFest
- Senior Focus
- Hotter'n Hell Hundred Mile Bike Ride
- Pennies for Prescriptions
- The Big Scoop Food Drive
- Wichita Falls Food Bank
- July 4th Freedom Fest (with Sheppard Air Force Base)
- Cattle Barron's Ball
- Texas/Oklahoma State Fair
- Falls Fest
- Race for the Cure, MDA Labor Day Telethon, March of Dimes Walk America, American Heart Association Heart Ball, American Cancer Society, Habitat for Humanity, American Red Cross
- Fall Air Show at Sheppard Air Force Base

- Teens Make A Difference Day
- Monthly Spirit of Texoma Award
- and numerous others.

In addition, station personnel visit local schools and individually participate in the community.[21]

B. Current Challenges Facing Today's Television Broadcasters.

Television broadcasters transmit their programming free, over-the-air to viewers. Historically, broadcasters have received compensation from their affiliated networks to help offset expenses. Today, however, very few broadcasters receive such network compensation and, in fact, many have to pay their networks for the affiliation, as well as in some cases paying extra for programming such as NFL and NCAA programming. Consequentially, television broadcasters today rely primarily on advertising sales for revenues to cover their ever-increasing operating expenses.[22]

However, television stations are competing more and more with other content providers, including the Internet, for advertising revenues. More than $20 billion was spent on Internet advertising last year, while TV revenues from advertising declined.[23] In addition, cable companies are allowed to pre-empt a portion of the spots delivered from national program services with their own local spots, which can be sold through cable interconnects. Thus, as the Commission readily acknowledges, television broadcasters are facing increasing competition

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21 KFDX-TV is not unique among Nexstar's stations. All of its stations are extensively involved in their local communities.

22 Nexstar's stations are primarily supported through advertising revenues, with approximately 80% of its stations' operating revenues derived from spot advertising.

23 *State of the News Media*, http://www.stateofthemedia.org/2010/online_economics.php; http://www.stateofthemedia.org/2010/local_tv_summary_essay.php.

from MVPD network channels and the Internet.[24] All of these factors have resulted in the average television broadcaster facing significant advertising revenue declines.

Further, viewership of local news is in decline, with viewership of late, early evening and early morning news declining 6.4 percent, 6.7 percent and 5.5 percent respectively in 2009. Yet the cost to produce local news does not decline with the decline in viewership. Therefore, although TV station revenues are declining, their operating costs are not. In addition, television stations are only slightly removed from expending the millions of dollars necessary to convert their facilities from analog to digital operations (with many stations still spending hundreds of thousands of dollars to purchase digital studio equipment and update sets to begin providing locally-originated DTV programming). Accordingly, local television broadcasters are facing significant challenges to their very existence.

C. The Local TV Ownership Rule Ignores Market Realities.

The genesis of the Local TV Ownership Rule dates back to a time when there were very few media outlets serving the needs of local viewers/consumers. Under the current rule one entity is permitted to own, operate or control two television stations in the same Designated Market Area if one station is a satellite of the other, if the Grade B contours of the stations do not overlap or if, at the time an application to acquire the second station is submitted, at least one of the stations is not ranked among the top-four stations in the market and at least eight independently owned and operating full-power television stations would remain in the market.[25]

The Commission adopted these voice and ranking requirements in 1999 based on its conclusion that television broadcast stations were the primary source of news and entertainment

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24 *NOI* at p. 5. The NOI is replete with statistics verifing the challenges facing local TV broadcasters in today's media marketplace.

25 47 C.F.R. §73.3555(b).

programming for Americans; that non-television broadcast alternatives were not widely accessible or meaningful substitutes for broadcast television; and that such a rule was necessary to preserve viewpoint diversity in local news programming.[26] This rule has remained unchanged through two additional review cycles, based on the Commission's conclusions that competition among stations provides an incentive for stations to invest in better programming and provide programming that is preferred by viewers; and to protect competition in local television advertising markets which allows local businesses to pass savings generated from lower advertising prices on to consumers.[27]

The current rule establishes bright-line guidelines that are applicable to all media owners equally despite the fact that all media owners are not equal. Thus, the Local TV Ownership Rule permits Comcast to merge with NBC Universal, which, if approved by the Commission, will create a company that owns the country's largest MVPD and Internet delivery systems, 26 local television stations, two broadcast networks, and more than 20 MVPD-delivered programming channels. (As the rules are now written, Comcast could also acquire radio stations.) The Local TV Ownership Rule also permits a single company to own a television station and multiple radio stations in the market. What the Local TV Ownership does not permit is a pure television broadcaster such as Nexstar, with no other in-market media interests, to own two television stations in medium and smaller markets.

Further, the top-four prohibition makes no sense in light of the fact that not all top-four stations are created equal. For example, in the Wilkes-Barre/Scranton DMA, WNEP-TV is far and away the market leader in terms of audience ratings. Nonetheless, the Local TV Ownership

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26 *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999), subsequent history omitted.

27 *2006 Quadrennial Regulatory Review*, 23 FCC Rcd at 2064.

Rule prohibits common ownership of the second and fourth or third and fourth ranked stations in the market no matter what the stations' combined ratings would be, even if the combined ratings of two such stations would not equal the ratings of WNEP-TV. In addition, station ratings are inherently connected to how well the station's network-affiliated and syndicated programming attract viewers in the market. Further, using only broadcast station ratings to rank stations looks at an "artificial" market because it does not take into account MVPD-delilvered network programming ratings. Nor does a ratings-based prohibition take into account ratings anomalies.

The Local TV Ownership Rule is also discrimination without logic. Revenues in New York City and Los Angeles are the largest in the nation. Revenues in Terre Haute and Utica are among some of the smallest in the nation. However, in New York and Los Angeles, a broadcaster can own two television broadcast stations, while in Terre Haute and Utica a broadcaster cannot. Yet the same competitive conditions apply in large, medium and small markets, and providing regulatory relief to larger markets, but not smaller markets where regulatory relief is most needed, is counter-intuitive.

D. Permitting Duopoly Ownership In All Markets Will Not Harm The Public Interest.

Local broadcast stations continue to be the predominant choice for consumers local news and information.[28] Nonetheless, the costs associated with producing local news are extremely high and require significant capital investment, causing many medium and small market stations to abandon local news programming in order to survive. For example, despite working for more than 10 years to make local news on broadcast station WYOU profitable, Nexstar ceased producing local news programming for WYOU under the parties' shared services agreement in

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[28] *See Public Evaluations of the News Media* at p. 13 (64% say they get most of their news about issues and events in their area from television).

April 2009 because Nexstar's costs for producing the news for WYOU far exceeded the revenues Nexstar could bring in for advertising during and adjacent to the newscasts. Nexstar further believes that if it were not for the combined news operations (through shared services agreements) in several of its markets, local news programming on at least one of the stations in these markets also would be discontinued due to the high costs required to provide local news programming.

Notwithstanding the elimination of WYOU's local newscasts strictly for economic reasons, as Nexstar has stated herein (and in its previous ownership comments), serving the local community's information needs is at the core of a local TV station's operations. Without this, local TV stations become just another media channel competing for market share in the overly crowded media marketplace. Accordingly, it is not in a local TV station's interest to discontinue that programming which makes it unique from all other media outlets.

Nexstar also has noted that it is in a broadcaster's economic interest to broadcast different programming on its commonly-owned stations in order to attract the widest possible viewing audience. Therefore, the Commission's long held assumption that allowing common ownership of two top-four ranked television stations will result in a reduction in programming choices is simply erroneous. Nearly all top-four ranked stations are affiliates of the ABC, CBS, Fox or NBC networks, so during most prime-time and many other time slots, the networks select the programming, not the affiliates. Further, there is simply no benefit to broadcasting the same syndicated program on two stations.

However, the cost savings generated through the efficiencies of duopoly ownership are critically important in medium and small markets. Duopolies permit stations to eliminate redundancies through the sharing of equipment and personnel. The savings generated through these efficiencies permit a station to sustain (and perhaps increase) news and other local programming. Moreover, a station not teetering on the edge of survival is more likely to host or sponsor political debates and community forums and participate (or participate at a higher level) in local community activities. Thus, duopolies provide an opportunity for more diverse and better local programming and local community interaction. In addition, as Nexstar has documented in its comments in past ownership proceedings, its joint operating agreements permit both Nexstar and the other in-market station to achieve limited operating efficiencies which have resulted in cost savings that benefit the public through sustained local programming, upgraded technology (such as Doppler weather radar systems and electronic newsgathering equipment) and active community participation. [29]

The Local TV Ownership Rule does not create a level playing field for television-only broadcasters, which disserves both these broadcasters and viewers. Throughout the Commission's review of the Local TV Ownership Rule, it has acknowledged that permitting one owner to own a second in-market station results in substantial savings in overhead and management costs, allows broadcasters to innovate by spreading fixed costs and capital budgets over a number of operating units, and better positioning to compete with non-broadcast content providers for advertising dollars.[30] Based on the declining television industry revenues and increased marketplace competition, it is critical that the Commission revise the Local TV Ownership Rules to permit a broadcaster with no other in-market ownership interests (i.e., no attributable local radio, cable or newspaper ownership interests) to own two television stations in

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[29] *See Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277 et al.*, Comments of Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC submitted January 2, 2003, Appendix A.

[30] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2064-65 *See also 2002 Biennial Review Order* 18 FCC Rcd at 13683; *Prometheus*, 373 F. 3d at 415.

any market regardless of station rankings, subject only to antitrust concerns. Otherwise, local TV programming may become increasingly scarce.

III. CONCLUSION.

Local television stations play a vital role in their communities by providing numerous viewer and community benefits, including weather information, AMBER alerts and other critical emergency information, as well as news and public affairs programming. However, many medium and small market stations are losing revenues as a result of unprecedented levels of competition from other media, while station expenses, particularly those associated with producing local news programming, continue to increase.

Therefore, as the Commission develops its analytical framework for its review of the Local TV Ownership Rule, it must acknowledge that not all media owners are equal and that changing marketplace realities are affecting pure television broadcast companies drastically. For local television broadcasters to survive and continue to provide media choice to consumers, the Commission must bring the Local TV Ownership Rule into the 21st Century and provide substantial and meaningful regulatory relief to medium and small market television-only broadcasters. It is imperative that the Commission permit common ownership of two TV stations in medium and small markets, regardless of "voices" and "rankings." Otherwise, the Commission's longstanding policy goals of competition, diversity and localism will fall victim to the competitive pressures facing medium and small broadcasters in today's hypercompetitive media marketplace.

WHEREFORE, for the foregoing reasons, Nexstar respectfully urges the Commission to modify the Local TV Multiple Ownership Rule to allow television broadcasters with no other in-market media interests to own two commercial TV stations in any market.

Respectfully submitted,

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